

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2887 Session of
2022

INTRODUCED BY ROSSI, HENNESSEY, RYAN, TWARDZIK, HAMM, JAMES,
BERNSTINE, NEILSON, JOZWIAK AND CIRESI, OCTOBER 20, 2022

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 20, 2022

AN ACT

1 Repealing the act of July 13, 1953 (P.L.389, No.86), entitled
2 "An act to provide revenue by imposing a tax on retail sales
3 of tangible personal property to consumers; requiring sellers
4 to file returns; providing for the assessment, collection and
5 lien of the tax; imposing duties on prothonotaries;
6 prescribing penalties; and providing for the use of the
7 proceeds of such tax for public school purposes."

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The act of July 13, 1953 (P.L.389, No.86), known
11 as the Consumers Sales Tax Act, is repealed:

12 [ARTICLE I

13 SHORT TITLE AND DEFINITIONS

14 Section 101. Short Title.--This act shall be known and may
15 be cited as the "Consumers Sales Tax Act."

16 Section 102. Definitions.--The following words, terms and
17 phrases when used in this act shall have the meaning ascribed to
18 them in this section, except where the context clearly indicates
19 a different meaning:

20 (1) "Business." Any and all activities engaged in or caused

1 to be engaged in with the object of gain or economic benefit,
2 direct or indirect.

3 (2) "Department." The Department of Revenue of this
4 Commonwealth.

5 (3) "Sale Price." The amount received in money, credits or
6 intangible property from sales at retail, without deduction on
7 account of the cost of property sold, amounts paid for interest,
8 discounts, losses or any other expenses or burdens whatsoever.
9 In computing sale price, there may be deducted any credit
10 actually given or refund actually paid for goods returned and
11 any credit actually given or allowance actually made for any
12 tangible personal property actually taken in trade or exchange
13 for the whole or any part of the sale price of the property
14 sold.

15 (4) "Person." Any natural person, firm, partnership,
16 association, corporation, fiduciary, or other entity, carrying
17 on business. Whenever used in any provision of this act which
18 prescribes or imposes a fine or imprisonment or both, the term
19 "person," as applied to a firm, partnership or association,
20 shall include the members thereof, and, as applied to a
21 corporation, the officers thereof. A firm, partnership,
22 association or a corporation may be subjected as an entity,
23 however, to the payment of a fine.

24 (5) "Purchaser." Any person who purchases tangible personal
25 property in any transaction taxable under this act.

26 (6) "Seller." Any person engaged in the business of selling
27 tangible personal property at retail, and it shall be immaterial
28 whether the goods sold are or are not manufactured or produced
29 by the seller.

30 (7) "Sale at Retail." Any transaction by which the

1 ownership of tangible personal property is transferred for a
2 consideration, when such transfer is made to the transferee for
3 consumption or use. The term "sale at retail" includes any
4 rental, bailment lease, conditional sale and any other
5 transaction, under whatever name or form, whereby title being
6 retained for security is ultimately to pass to the purchaser or
7 whereby possession is transferred in lieu of a transfer of
8 title.

9 The term "sale at retail" does not include:

10 (a) Sales for the purpose of resale of tangible personal
11 property in its original form.

12 (b) Any isolated sale of tangible personal property, other
13 than motor vehicles, trailers and semi-trailers, by one not a
14 seller and not made in the ordinary course of the transferor's
15 business.

16 (c) Any isolated sale of tangible personal property, other
17 than motor vehicles, trailers and semi-trailers, by one who,
18 though a seller, is not such a seller with respect to the
19 article sold, but all sales by a seller shall be presumed to be
20 sales at retail.

21 (d) Sales of intoxicating liquors, including malt and brewed
22 beverages.

23 (e) Sales of cigarettes.

24 (f) Sales of gasoline and other motor fuels.

25 (g) Sales of utility services, the gross receipts from which
26 are taxed by the Commonwealth.

27 (h) Sales to the Commonwealth or any of its agencies or
28 political subdivisions or to authorities created by or pursuant
29 to law.

30 (i) Sales to the United States or any of its agencies.

1 (j) Sales in interstate and foreign commerce, but only in
2 the instances and to the extent that the Commonwealth is
3 prohibited from taxing such sales by the Constitution of the
4 United States.

5 (k) Sales of newspapers, magazines and other periodicals.

6 (l) Sales of medicine on prescription, sales of crutches,
7 wheelchairs for the use of cripples and invalids, and when
8 designed to be worn on the person of the purchaser or user,
9 artificial limbs, artificial eyes and artificial hearing
10 devices, sales of false teeth by a dentist and the materials
11 used by a dentist in dental treatment, sales of eyeglasses when
12 especially designed or prescribed by an ophthalmologist, oculist
13 or optometrist for the personal use of the owner or purchaser,
14 and sales of artificial braces and supports designed solely for
15 the use of crippled persons.

16 (m) Sales of bakery products, milk, groceries and meat as
17 food products for human consumption. For the purposes of this
18 clause, (i) "milk" shall mean raw milk products from domestic
19 animals or such milk when processed or canned; (ii) "groceries"
20 shall mean all food products and all food ingredients for human
21 consumption or for use in the preparation thereof for human
22 consumption, ordinarily sold in grocery stores, except candies,
23 confections, soft drinks, tobacco or tobacco products; (iii)
24 "meat" shall include the flesh of animals, fish, sea food,
25 poultry and game.

26 (n) Sale of clothing and shoes, but not jewelry or any other
27 object not worn primarily to cover the human body against
28 nakedness or cold.

29 (o) Sales of tangible personal property (i) which is to be
30 used in fabricating, compounding or manufacturing tangible

1 personal property or in producing public utility service to be
2 sold ultimately at retail, or (ii) which is to be used in the
3 process of farming, agriculture or horticulture and which, in
4 either event, becomes an ingredient or component part of the
5 fabricated, compounded or manufactured tangible personal
6 property or public utility product or of the product of farming,
7 agriculture or horticulture, or is consumed in the process of
8 fabrication, compounding, manufacturing or producing or in the
9 process of farming, agriculture or horticulture, or (iii) which
10 is to be used in the production or delivery of public utility
11 service.

12 (p) The performance of personal service.

13 (q) Sales of tangible personal property intended for
14 incorporation and incorporated into a building, road, street,
15 bridge, or other structure, provided such property is so
16 incorporated pursuant to a contract entered into prior to the
17 effective date of this act, and provided further that the person
18 so incorporating such property submit to the department proof of
19 the facts in such form as the department may require.

20 (r) Sales of tangible personal property intended for use and
21 used in a church for religious purposes.

22 (s) Sales of water by water companies, political
23 subdivisions or authorities.

24 (8) "Tangible personal property." Corporeal personal
25 property including, but not restricted to, goods, wares and
26 merchandise. The term "tangible personal property" does not
27 include money, deposits in banks, shares of stock, bonds, notes,
28 credits, or evidence of an interest in property or evidence of
29 debt.

30 (9) "Tax." Any tax, interest or penalty imposed or levied

1 under the provisions of this act.

2 (10) "Taxpayer." Any retail dealer or any person making
3 sales taxable under this act.

4 (11) "Ultimate consumer." As referring to any tangible
5 personal property, any person who uses or consumes such tangible
6 personal property.

7 (12) "Wholesale dealer." Any person engaged in the business
8 of selling tangible personal property to retail dealers for
9 resale only and not for personal use or consumption.

10 ARTICLE II

11 IMPOSITION AND COLLECTION OF TAX

12 Section 201. Imposition.--A tax is hereby imposed upon each
13 separate sale at retail within this Commonwealth, which tax
14 shall be collected by the seller from the purchaser and shall be
15 paid over to the Commonwealth as herein provided. In the case of
16 a sale at retail of motor vehicles, trailers or semi-trailers by
17 one not a seller, the tax shall be paid by the ultimate consumer
18 to the department upon application to the department for the
19 issuance of a certificate of title. The department shall not
20 issue a certificate of title until the tax has been paid or
21 evidence satisfactory to the department has been given to show
22 that no tax is due.

23 Section 202. Amount of Tax.--(a) The rate of tax shall be
24 one per centum (1%) of the sale price of each separate sale at
25 retail.

26 (b) The tax shall be computed as follows:

27 (1) Where the consideration is ten cents or less, no tax
28 shall be collected.

29 (2) On each sale where the consideration is from eleven
30 cents to one dollar, both inclusive, the tax shall be one cent.

1 (3) On each sale where the consideration is in excess of one
2 dollar, the tax shall be one cent on each additional dollar or
3 fraction thereof.

4 Section 203. Purchaser to Pay; Accounting by Sellers.--The
5 seller shall in each case demand the tax from the purchaser and
6 the purchaser shall pay the same to the seller. The seller shall
7 keep the amount of all of the taxes so paid to him by all
8 purchasers in a fund separate and apart from the proceeds of the
9 sales and from all his other funds, unless the department
10 otherwise directs. If the department shall authorize any seller
11 to commingle the proceeds of the tax with the proceeds of sale,
12 the claim of the Commonwealth for the tax shall be enforceable
13 against and shall take precedence over all other claims against
14 the commingled fund. Each seller shall, as hereinafter provided,
15 account to the Commonwealth for the entire amount of all taxes
16 collected from purchasers.

17 Section 204. Total Amount Collected to be Remitted.--No
18 profit other than the compensation provided for in section two
19 hundred twelve shall accrue to a seller or other person from the
20 collection of any tax imposed by this act. Any person collecting
21 any such tax shall return and remit the total amount thereof to
22 the department, as hereinafter provided. If the total amount of
23 taxes so collected in any period shall be in excess of one per
24 centum (1%) of the sale price of the sales by the person
25 collecting such taxes during such period, such person shall
26 nevertheless remit to the department the total amount of taxes
27 collected without deducting the amount by which the taxes
28 collected exceed one per centum (1%) of the sale price of his
29 sales during such period and without making any other deduction
30 other than the compensation allowed by section two hundred

1 twelve of this act.

2 Section 205. Sales Presumed to be at Retail.--Every sale of
3 tangible personal property shall be presumed to be at retail and
4 to be taxable. The seller may require any purchaser claiming
5 that a sale is not taxable to give him a written statement
6 signed by the purchaser and giving his address, certifying that
7 the tangible personal property, the subject of the sale, is
8 purchased for a purpose not included in the definition of "sale
9 at retail." Such a certificate shall, in the absence of actual
10 fraud on the part of the seller, justify him in failing to
11 collect the tax. If he fails to collect a tax on any sale where
12 he does not obtain such a written statement from the purchaser,
13 the seller shall be liable for the tax, as hereinafter provided,
14 unless he shall sustain the burden of proving that the sale was
15 not at retail.

16 Section 206. Tax to be Paid by Ultimate Consumer.--It is
17 hereby stated as the legislative intent that the tax imposed
18 hereby shall be paid by the ultimate consumer. The amount of the
19 tax shall be added to the sale price and shall constitute a part
20 of that price (though a separate item, as hereinbefore provided)
21 and shall be collectible as such.

22 Section 207. Seller Shall Not Pay Tax; Penalty.--(a) No
23 person engaged in a business as a retail dealer shall advertise
24 or represent to the public in any manner, directly or
25 indirectly, that he will absorb said tax or any part thereof or
26 that the full tax on each sale will not be considered an element
27 of the price and be added to the price otherwise ascertained.
28 Nor shall any such person knowingly absorb the tax on any sale
29 nor fail to add the full amount of the tax to the sale price
30 otherwise ascertained and collect said tax as part of the sale

1 price.

2 (b) Any person who violates any of the provisions of
3 subsection (a) of this section shall be guilty of a misdemeanor
4 and shall, upon conviction thereof, be sentenced to pay a fine
5 not exceeding one thousand dollars (\$1000) and costs of
6 prosecution, or to undergo imprisonment for not more than one
7 year, or both, at the discretion of the court.

8 Section 208. Agreements and Regulations as to Methods of
9 Adding the Tax.--(a) To provide uniform methods of adding the
10 average equivalent of the tax imposed by this act to the sale
11 price in each sale subject to the tax, appropriate rules and
12 regulations may be adopted, subject to the approval of the
13 department, by competing taxpayers or associations of taxpayers.
14 Such rules and regulations shall provide that the tax shall in
15 each instance be computed and collected on the basis of the
16 total transaction, without regard to the value or price of the
17 separate items making up the total amount of a single sales
18 transaction. Such rules and regulations shall not, if complying
19 with the foregoing provisions and not involving price-fixing, be
20 deemed illegal as in restraint of trade or commerce or
21 otherwise. The department may cooperate in formulating such
22 rules and regulations and shall approve any such rules and
23 regulations which it finds to be in compliance with this act.

24 (b) In the event appropriate rules and regulations governing
25 any class of business are not submitted to the department for
26 approval within such time as the department prescribes, which
27 shall be not earlier than thirty days after the effective date
28 of this act, the department shall, as soon as reasonably
29 possible, formulate and promulgate rules and regulations to
30 effectuate the purpose of this section.

1 Section 209. Collection of Tax on Credit Sales.--If any sale
2 subject to tax hereunder is wholly or partly on credit, the
3 taxpayer shall require the purchaser to pay in cash at the time
4 the sale is made or within thirty days thereafter, the full tax
5 due on the basis of the entire sale price.

6 Section 210. Records of Sales.--Any person engaged in
7 business as a retail dealer who is at the same time engaged in
8 another business or businesses which does not involve the making
9 of sales taxable under this act shall keep separate books or
10 records of his business as a seller so as to show the sales
11 taxable under this act separately from his transactions not
12 taxable hereunder. If any such person fails to keep such
13 separate books or records, he shall be liable to tax at the rate
14 designated in section two hundred two hereof upon the entire
15 sale price of both or all of his businesses.

16 Section 211. Sales between Affiliated Interests, etc.--In
17 determining sale price of taxable sales where, because of
18 affiliation of interests between the seller and buyer or for any
19 other reason, the sale price from a sale are not indicative of
20 the true value of the article sold or the fair price thereof,
21 the department shall prescribe uniform and equitable rules for
22 determining the amount of constructive sales prices upon the
23 basis of which the tax shall be levied. Such rules shall provide
24 for a constructive amount of a sales price for each such sale
25 which shall equal a price for such article which would naturally
26 and fairly be charged in an arms-length transaction in which the
27 element of common interests between buyer and seller or any
28 other element causing a distortion of the price is absent.

29 Section 212. Compensation to Seller for Collection and
30 Return.--For the purpose of compensating sellers for the keeping

1 of prescribed records and the proper accounting and remitting of
2 taxes by them, such sellers shall be allowed a commission of
3 three per centum (3%) of the amount of the tax due and accounted
4 for and remitted to the department, which commission shall be
5 allowed in the form of a deduction in submitting the report of
6 such seller and the payment of the amount due by him. Such
7 compensation, commission or allowance shall not be granted nor
8 shall any deduction be permitted with respect to any taxes not
9 paid on or before the due date thereof or where there is a
10 manifest failure to maintain proper records or make proper
11 prescribed reports.

12 Section 213. Registration of Sellers.--Each person desiring
13 to continue to engage or begin to engage in the business of
14 seller, as herein defined, shall, on or before the effective
15 date of this act or prior to the beginning business thereafter,
16 make application to the department for a certificate of
17 registration upon a form prescribed by it. Upon receipt of such
18 application, the department shall promptly issue to each such
19 applicant such a certificate, with duplicates thereof for each
20 additional place of business of the applicant within this
21 Commonwealth. Each certificate or duplicate shall, in addition
22 to the seller's name and principal place of business, state the
23 place of business to which it is applicable, and shall be
24 prominently displayed at such place of business. A seller who
25 has no regular place of business shall display his certificate
26 upon his cart, stand, truck or other merchandising device.
27 Certificates of registration and duplicates thereof shall be
28 non-assignable and non-transferable and shall be surrendered to
29 the department immediately upon the seller's ceasing to do
30 business at the place stated therein. Any seller who shall

1 wilfully fail to obtain and display a certificate of
2 registration or duplicates thereof at such of his places of
3 business shall, upon conviction therefor in a summary
4 proceeding, be sentenced to pay a fine of not more than one
5 hundred dollars (\$100) and costs of prosecution, and, in default
6 of payment thereof, shall be imprisoned for a period not
7 exceeding thirty days. The failure of any seller to procure the
8 certificate of registration as herein required shall not relieve
9 him from the duty of collecting and remitting the tax as
10 required by this act.

11 ARTICLE III

12 RETURNS AND PAYMENT

13 Section 301. Returns and Payment.--(a) The taxes imposed by
14 this act shall be due and payable on or before the twentieth day
15 of November, February, May and August, for the periods ending
16 the last day of October, January, April and July, respectively,
17 during which the sales at retail subject to the tax were made.
18 For the month ending on the thirty-first day of August, one
19 thousand nine hundred fifty-five, the taxes imposed by this act
20 shall be due and payable on or before the twentieth day of
21 October, one thousand nine hundred fifty-five.

22 (b) Each taxpayer shall, on or before the twentieth day of
23 November, February, May and August, make out and sign a return
24 for the preceding tax period. For the month ending on the
25 thirty-first day of August, one thousand nine hundred fifty-
26 five, the return shall be made out and signed on or before the
27 twentieth day of October, one thousand nine hundred fifty-five.
28 Such return shall be mailed to the department in time so that it
29 will reach the department, in the ordinary course of the mails,
30 on or before the twentieth day of the month succeeding the

1 period with respect to which the return is made.

2 (c) The return shall be on a form prescribed by the
3 department. The department shall distribute return forms to
4 taxpayers but no taxpayer shall be excused from liability for
5 failure to file a return or pay the tax because he has failed to
6 receive a form.

7 Each such return shall show:

8 (1) The total gross proceeds of the business of the taxpayer
9 for the period with respect to which the return is filed;

10 (2) The amount of sales at retail of such business with
11 respect to which the tax is computed;

12 (3) The amount of tax due;

13 (4) Such other information with respect to the business, the
14 amount of sales at retail or related matters as the department
15 may reasonably require.

16 Any such return may be signed by a duly authorized agent of
17 the taxpayer with the same effect as if signed by the taxpayer
18 himself.

19 Any person making a false return shall be guilty of perjury
20 to the same extent as though the return had been sworn to.

21 (d) A remittance for the amount of the tax shall accompany
22 each quarterly return.

23 Section 302. Other Times for Returns and Payment.--The
24 department may, upon written request, authorize a taxpayer whose
25 books and records are not kept on a calendar basis to file
26 returns at other times than those specified in this act and in
27 lieu of such returns. In no event shall the taxpayer be
28 permitted to make less than one return during a three-month
29 period. Except as to the time of filing and the period covered,
30 all the provisions as to returns required by sections three

1 hundred one and three hundred four shall be applicable to
2 returns made under this section and a remittance for the tax
3 shall accompany any return made under this section.

4 Section 303. Consolidation of Use Tax Returns.--Any sellers
5 liable for the collection or payment of the taxes imposed by the
6 Use and Storage Tax Act may elect, under regulations promulgated
7 by the department, to report and pay the taxes due under said
8 act at the same time as they file returns and pay the taxes due
9 under this act.

10 Section 304. Annual Returns.--(a) On or before the last day
11 of February in each year, every taxpayer shall file with the
12 department, in the manner heretofore specified for quarterly
13 returns, an annual return covering the entire preceding calendar
14 year or such part thereof as the taxpayer was engaged in a
15 business as a retail dealer. For the period ending on the
16 thirty-first day of August, one thousand nine hundred fifty-
17 five, and including those periods not previously covered by an
18 annual return, the annual return shall be filed on or before the
19 last day of October, one thousand nine hundred fifty-five. Such
20 return shall be in addition to and not in lieu of returns
21 required to be filed under the provisions of sections three
22 hundred one or three hundred two.

23 (b) Each such annual return shall include all items required
24 for returns in section three hundred one hereof for the entire
25 calendar year with respect to which it is made and shall be
26 signed by the taxpayer or his authorized agent. Any person
27 making a false return shall be guilty of perjury to the same
28 extent as though the return had been sworn to.

29 (c) If the amount of tax due for the preceding year as shown
30 by the annual return of any taxpayer is greater than the amount

1 already paid by him in connection with his quarterly or other
2 returns, he shall send with such annual return a remittance for
3 the unpaid amount of tax for the year.

4 Section 305. Extension of Time for Making Returns.--The
5 department may, on written application and for good cause shown,
6 extend the time for making any return required or permitted by
7 any of the preceding sections of this article: Provided,
8 however, That the time for making any return other than an
9 annual return shall not be extended more than one month and the
10 time for making an annual return shall not be extended more than
11 three months.

12 ARTICLE IV

13 PROCEDURE

14 Section 401. Department of Revenue to Administer.--The
15 Department of Revenue shall administer and enforce this act and
16 collect the tax hereby imposed.

17 Section 402. Examination of Returns; Assessment of Tax;
18 Credits.--(a) As soon as practicable after any return is filed,
19 the department shall examine it, and if the return shows a
20 greater tax due than the amount of the remittance sent with such
21 return, the department shall forthwith assess the difference.
22 Such difference shall be paid to the department within ten days
23 after notice of its assessment. If so paid, there shall be no
24 interest or penalty; if not so paid, there shall be added to
25 such amount five per centum thereof and, in addition, interest
26 at the rate of one-half of one per centum per month for each
27 month or fraction thereof from the date of such notice to the
28 date of payment. No taxpayer shall have any right of appeal from
29 such an assessment.

30 (b) If the department determines that any return or returns

1 of any taxpayer understates the amount of tax due, the
2 department shall assess the proper amount and shall determine
3 the difference between the amount of tax shown in the return and
4 the amount assessed, such difference being hereafter sometimes
5 referred to as the "deficiency." Such deficiency shall be paid
6 to the department within ten days after a notice of the
7 assessment thereof shall be mailed to the taxpayer by the
8 department. In such case, if such understatement of the tax in
9 the return or returns was made in good faith, there shall be no
10 interest or penalty because of such understatement: Provided,
11 That the deficiency be paid or notice of an intention to file a
12 petition for a reassessment or to appear and be heard, as herein
13 provided, shall be given within ten days after notice of the
14 assessment of such deficiency be mailed to the taxpayer. If such
15 payment is not made within ten days and if no notice of an
16 intention to file a petition for a reassessment or to appear and
17 be heard is given to the department within ten days, as herein
18 provided, there shall be added to the amount of the deficiency
19 five per centum thereof and, in addition, interest at the rate
20 of one-half of one per centum per month for each month or
21 fraction thereof from the date of such notice to the date of
22 payment. If any understatement in any of such returns is false
23 or fraudulent with intent to evade the tax, the deficiency
24 resulting from such understatement shall be doubled and, in
25 addition thereto, an additional one-half of one per centum of
26 such doubled deficiency shall be added for each such month or
27 fraction of a month from the date the tax was originally due to
28 the date of payment.

29 (c) If the amount of the tax as assessed by the department
30 shall be less than the amount already paid by the taxpayer, the

1 department shall so notify the taxpayer and the amount so
2 overpaid may be taken by such taxpayer as a credit on the tax
3 shown as due in any subsequent return or returns filed in
4 accordance with the provisions of this act.

5 Section 403. Estimated Assessments.--(a) If any person
6 believed by the department to be liable for tax under the
7 provisions of this act shall have failed to file a return in
8 accordance with and within the time prescribed by this act, and
9 if the department shall deem it more conducive to the public
10 interest because of the supposed smallness of the tax or for any
11 other reason not to proceed to compel the exhibition of the
12 accounts of such person, it may make an estimated assessment of
13 the probable amount of tax owing by such person; but in every
14 such case the department shall add to such estimated assessment
15 a penalty of fifty per centum (50%) thereof and the department
16 shall proceed to collect such estimated tax and penalty as in
17 other cases if the amount is not paid when due.

18 (b) The estimated assessment thus determined, together with
19 the penalty of fifty per centum (50%) specified above and
20 interest at the rate of one-half of one per centum per month or
21 fractional part thereof until paid, shall be due and payable ten
22 days after notice of such settlement shall have been mailed by
23 the department to the person against whom the estimated
24 assessment has been made.

25 Section 404. Limitation of Assessments.--(a) Any additional
26 assessment or estimated assessment shall be made by the
27 department within five years of the date when the annual return
28 required by section three hundred four hereof should have been
29 filed, as prescribed in this act, whether the date originally
30 prescribed or pursuant to any extensions of the time for filing

1 such return duly granted by the department and not after. Any
2 such additional assessment or estimated assessment may be made
3 at any time during such period, notwithstanding that the
4 department may have made one or more previous additional
5 assessments or estimated assessments or both against the
6 taxpayer for the year in question or for any part of such year.
7 In any such case, no credit shall be given for any penalty
8 previously assessed or paid.

9 (b) If the taxpayer shall have died, any taxes, interest and
10 penalties due under this act for years prior to his death or for
11 the year of his death and whether based on original assessments,
12 additional or estimated assessments or otherwise, may be
13 presented by the department at audit of his estate in the
14 orphans' court. Such court shall give full effect to the
15 priorities and equitable interest given to the Commonwealth by
16 this act.

17 Section 405. Reassessment; Review; Appeal; Refund.--(a) Any
18 taxpayer against whom an additional or estimated assessment is
19 made may petition the department for a reassessment. Notice of
20 an intention to file such a petition or to appear and be heard
21 shall be given to the department prior to the time the
22 additional or estimated assessment becomes due and payable. The
23 department shall hold such hearings as may be necessary for the
24 purpose, at such times and places as it may determine, and each
25 taxpayer who has duly notified the department of an intention to
26 file a petition for reassessment or to appear and be heard shall
27 be notified by the department of the time when and the place
28 where such hearing in his case will be held. A petition for
29 reassessment, if filed, shall set forth explicitly and in detail
30 the grounds upon which the taxpayer claims that the additional

1 or estimated assessment is erroneous or unlawful, in whole or in
2 part, and shall be accompanied by an affidavit under oath or
3 affirmation certifying to the facts stated in the petition. If
4 no petition for reassessment has been filed with the department
5 but the taxpayer has given due notice of an intention to appear
6 and be heard, the taxpayer may appear at the hearing and present
7 his petition orally, in which event all statements of fact at
8 the hearing shall be made under oath or affirmation.

9 (b) Within sixty days after the date of mailing of notice by
10 the department of the action taken on any petition for
11 reassessment filed with it, the person against whom such
12 assessment was made may by petition request the Board of Finance
13 and Revenue to review such action. Every petition for review
14 filed hereunder shall state specifically the reasons on which
15 the petitioner relies or shall incorporate by reference the
16 petition for reassessment in which the reasons are stated. The
17 petition shall be supported by affidavit that it is not made for
18 the purpose of delay and that the facts therein set forth are
19 true. The Board of Finance and Revenue shall act finally in
20 disposing of petitions filed with it, within six months after
21 they have been received. In the event of the failure of the
22 board to dispose of any petition within six months, the action
23 taken by the department upon the petition for reassessment shall
24 be sustained. The Board of Finance and Revenue may sustain the
25 action taken on the petition for reassessment or it may reassess
26 the tax due on such basis as it deems according to law and
27 equity. The board shall give notice of its action by mail to the
28 department and to the petitioner.

29 (c) Any person or the Commonwealth aggrieved by the decision
30 of the Board of Finance and Revenue or by the board's failure to

1 act upon a petition for review within six months may, within
2 sixty days, appeal to the Court of Common Pleas of Dauphin
3 County from the decision of the board or from the decision of
4 the department, as the case may be, in the manner now or
5 hereafter provided by law for appeals in the case of tax
6 settlements.

7 (d) Refunds of taxes paid under this act shall be made under
8 the provisions of section five hundred three of the act,
9 approved the ninth day of April, one thousand nine hundred
10 twenty-nine (Pamphlet Laws 343), known as "The Fiscal Code" and
11 its amendments.

12 Section 406. Rules and Regulations; Inquisitorial Powers of
13 the Department.--(a) The department shall have the authority to
14 prescribe, adopt, promulgate and enforce rules and regulations
15 in conformity with this act and relating to any matter or thing
16 pertaining to the administration of the taxes imposed by this
17 act. The department may from time to time alter or amend such
18 rules and regulations in any manner it considers advisable.

19 (b) The department or any of its authorized agents is hereby
20 authorized to examine the books, papers and records of any
21 taxpayer or supposed taxpayer, including his bank accounts or
22 similar items, in order to verify the accuracy and completeness
23 of any return made, or, if no return was made, to ascertain and
24 assess the tax imposed by this act. The department may require
25 the preservation of all such books, papers and records for any
26 period deemed proper by it, not to exceed, however, six years
27 from the end of the calendar year to which the records relate.
28 Every such taxpayer is hereby required to give to the department
29 or its agent the means, facilities and opportunity for such
30 examinations and investigation. The department is further

1 authorized to examine any person under oath concerning taxable
2 sales by any taxpayer or concerning any other matter relating to
3 the enforcement or administration of this act; and to this end
4 may compel the production of books, papers and records and the
5 attendance of all persons, whether as parties or witnesses, whom
6 it believes to have knowledge of such matters. The procedure for
7 such hearings or examinations shall be the same as that provided
8 by the Fiscal Code relating to inquisitorial powers of fiscal
9 officers.

10 (c) Any information gained by the department as a result of
11 any return, investigation, hearing or verification required or
12 authorized by this act shall be confidential except for official
13 purposes and except in accordance with proper judicial order or
14 as otherwise provided by law; and any person unlawfully
15 divulging such information shall be deemed guilty of a
16 misdemeanor and, upon conviction thereof, shall be sentenced to
17 pay a fine not in excess of one thousand dollars (\$1000) and
18 costs of prosecution, or to undergo imprisonment for not more
19 than one year, or both, in the discretion of the court.

20 Notwithstanding the foregoing provisions of this subsection,
21 the department may permit the Commissioner of Internal Revenue
22 of the United States, or the proper officer of any other state
23 now or hereafter imposing a tax upon sales of tangible personal
24 property or classes of such property, or the authorized
25 representative of such Commissioner or officer, to inspect any
26 returns or reports of investigations filed or made under the
27 provisions of this act, or may furnish to such Commissioner or
28 officer or his authorized representative an abstract of any such
29 return, or supply him with information concerning any items
30 contained in any such return or report; but such permission

1 shall be granted or such information furnished to such
2 Commissioner or officer only if the statutes of the United
3 States or of such other state, as the case may be, grant equal
4 privileges to the officers of this Commonwealth charged with the
5 administration of this act.

6 Section 407. Records of Non-Residents.--(a) A non-resident
7 person, including a foreign corporation, who is engaged in one
8 or more businesses in this Commonwealth as a retail dealer,
9 shall keep adequate records of such business or businesses and
10 of the taxes due with respect thereto, which records shall at
11 all times be retained within this Commonwealth. No taxes
12 collected from purchasers shall be sent outside the Commonwealth
13 without the written consent of and in accordance with conditions
14 prescribed by the department.

15 (b) Any person who shall violate or assist in the violation
16 of the provisions of this section shall be guilty of a
17 misdemeanor and, upon conviction, shall be sentenced to pay a
18 fine not exceeding one thousand dollars (\$1000) and costs of
19 prosecution, or to undergo imprisonment not exceeding one year,
20 or both, in the discretion of the court.

21 Section 408. Tax Held in Trust for the Commonwealth.--All
22 taxes collected by any retail dealer from purchasers in
23 accordance with this act shall constitute a trust fund for the
24 Commonwealth, and such trust shall be enforceable against such
25 taxpayer, his representatives and any person receiving any part
26 of such fund without consideration or knowing that the taxpayer
27 is committing a breach of trust: Provided, however, That any
28 person receiving payment of a lawful obligation of the taxpayer
29 from such fund shall be presumed to have received the same in
30 good faith and without knowledge of the breach of trust. Any

1 person, other than a taxpayer, against whom the department makes
2 any claim under this section, shall have the same rights to
3 petition and appeal as are given taxpayers by any provisions of
4 this article.

5 Section 409. Priority of Tax.--In the distribution,
6 voluntary or compulsory, in receivership, bankruptcy or
7 otherwise, of the property or estate of any person, all taxes
8 imposed by this act which are due and unpaid and are not
9 collectible under the provisions of section four hundred eight
10 hereof shall be paid from the first money available for
11 distribution in priority to all other claims and liens, except
12 in so far as the laws of the United States may give a prior
13 claim to the Federal government. Any person charged with the
14 administration or distribution of any such property or estate
15 who shall violate the provisions of this section shall be
16 personally liable for any taxes imposed by this act which are
17 accrued and unpaid and are chargeable against the person whose
18 property or estate is being administered or distributed.

19 Section 410. Lien of Taxes.--All taxes imposed by this act,
20 together with all penalties and interest, shall be considered a
21 public account, after being assessed in the manner provided in
22 this act, and as such shall be a lien upon all real estate
23 within the Commonwealth of any taxpayer, resident or non-
24 resident, but only after the same has been entered and docketed
25 of record by the prothonotary of the county where such real
26 estate is situated, as hereafter provided.

27 The department may at any time transmit to the prothonotaries
28 of the respective counties certified copies of all liens for
29 taxes imposed by this act and penalties and interest. It shall
30 be the duty of each prothonotary receiving such lien to enter

1 and docket the same of record in his office, which lien shall be
2 indexed as judgments are now indexed. All such liens shall have
3 priority to and be fully paid and satisfied out of the judicial
4 sale of said real estate before any other obligation, judgment,
5 claim, lien or estate with which said real estate may
6 subsequently become charged or for which it may subsequently
7 become liable, subject, however, to mortgage or other liens
8 existing and duly recorded at the time such tax lien is
9 recorded, save and except the cost of sale and of the writ upon
10 which it is made and real estate taxes imposed or assessed upon
11 said property. The lien of said taxes, interest and penalties
12 shall continue for five years from the date of entry and may be
13 revived and continued in the manner now or hereafter provided
14 for renewal of judgments; and it shall be lawful for a writ of
15 scire facias to issue and be prosecuted to judgment in the
16 manner in which such written writs are ordinarily employed.

17 Any wilful failure of any prothonotary to carry out any duty
18 imposed upon him by this section shall be a misdemeanor and,
19 upon conviction, he shall be sentenced to pay a fine not
20 exceeding one thousand dollars (\$1000) and costs of prosecution,
21 or to undergo imprisonment not exceeding one year, or both, in
22 the discretion of the court.

23 ARTICLE V

24 VIOLATION AND PENALTIES

25 Section 501. Penalty for Fraudulent Annual Return.--Any
26 person who shall wilfully make or cause to be made the annual
27 return required by section three hundred four of this act which
28 is false and fraudulent shall be guilty of wilful and corrupt
29 perjury and, upon conviction thereof, shall be subject to
30 punishment as provided by law. Such penalty shall be in addition

1 to all other penalties imposed by any of the preceding
2 provisions of this act.

3 Section 502. Other Penalties.--Except as otherwise provided
4 by section five hundred one, any person who shall wilfully fail,
5 neglect or refuse to file any return or report required by this
6 act, or any taxpayer who shall refuse to pay any tax, penalty or
7 interest imposed or provided for by this act, or who shall
8 wilfully fail to preserve his books, papers and records as
9 directed by the department, in accordance with section four
10 hundred six hereof, or any person who shall refuse to permit the
11 department or any of its authorized agents to examine his books,
12 records or papers, or who shall knowingly make any incomplete,
13 false or fraudulent return or report, or who shall do or attempt
14 to do anything whatever to prevent the full disclosure of the
15 amount or character of taxable sales made by himself or any
16 other person, shall be guilty of a misdemeanor and, upon
17 conviction, shall be sentenced to pay a fine not exceeding one
18 thousand dollars (\$1000) and costs of prosecution, or undergo
19 imprisonment not exceeding one year, or both, in the discretion
20 of the court. The penalties imposed by this section shall be in
21 addition to any penalties imposed by any provision of this act
22 other than section five hundred one.

23 ARTICLE VI

24 DISPOSITION OF TAX, PENALTIES, INTEREST

25 Section 601. Disposition of Proceeds.--All taxes collected
26 under the provisions of this act, together with any penalties
27 and interest thereon, shall be used for public school purposes,
28 in so far as permitted by the requirements of the Constitution
29 of Pennsylvania.

30 ARTICLE VII

1 MISCELLANEOUS

2 Section 701. Saving Clause.--Nothing contained in this act
3 shall be construed to repeal any other law of this Commonwealth
4 imposing any tax for any purpose.

5 Section 702. Effective Date.--This act shall become
6 effective on the first day of the second calendar month after
7 the month in which it is finally enacted; and all taxable sales
8 during that month and for a period of two years thereafter shall
9 be subject to tax hereunder. The expiration of the period during
10 which tax is imposed by this act shall not relieve any person
11 from the filing of returns or from any taxes, penalties or
12 interest, imposed by the provisions of this act, or affect or
13 terminate any petitions, investigations, prosecutions legal or
14 otherwise, or other proceedings pending under the provisions of
15 this act, or prevent the commencement or further prosecution of
16 any proceedings by the proper authorities of the Commonwealth
17 for violations of such act, or for the assessment, collection or
18 recovery of taxes, penalties or interest due or owing to the
19 Commonwealth under this act.]

20 Section 2. This act shall take effect in 60 days.